

California Regional Water Quality Control Board
Santa Ana Region

September 30, 2005

ITEM: 16

SUBJECT: Adoption of Resolution No. R8-2005-0115, Authorizing the Executive Officer to sign two Prospective Purchaser Agreements with the City of Anaheim for Two Parcels in Anaheim, Orange County

DISCUSSION:

The Home Oil Company owns a parcel of land located at 1422 West Broadway in Anaheim and leases an adjacent parcel located at 318 South Hessel from the Union Pacific Railroad Company (collectively, the Site). The Site had been used as a bulk petrochemical storage and transfer facility and an agricultural supply and service facility for over 75 years. There have been three underground and 18 aboveground storage tanks used at the Site for the storage of gasoline, diesel fuel, vapor condensate, motor oil, agricultural chemicals and herbicides, and weed oil. Fuel hydrocarbons have been found in the soils beneath these tanks at various locations.

The City of Anaheim is proposing to purchase the Site and incorporate the Site into an adjacent park. The City of Anaheim intends to cause the clean-up the Site, utilizing 'held-back' purchase funds from the purchase of the property to fund the cleanup. The City of Anaheim desires to enter into two Prospective Purchaser Agreement (PPA) with the Board, one for each parcel, in order to be protected from future liabilities associated with pollution at the Site. The City of Anaheim is proposing to purchase the Site, clean up the Site, and restore the Site to productive use in exchange for agreements from the Board not to sue or to take other civil action against the City of Anaheim regarding the Site.

Since 1996, this Board has adopted several resolutions authorizing the Executive Officer to sign PPAs with parties proposing to buy properties where past discharges of wastes have impacted or have threatened to impact groundwater. In 1999, the Board adopted Resolution 99-81, 'Authorizing the Executive Officer to Sign Prospective Purchaser Agreements under Specified Conditions.' The Resolution was adopted to streamline the PPA process by allowing the Executive Officer to sign PPAs, without Board approval, for sites that were not complex or controversial, and complied with the conditions specified in the Resolution. It was the Board's intent that proposed PPAs not meeting the conditions specified in the Resolution be brought before the Board for approval in order to afford notice and the opportunity for public discussion. One of the conditions states, "The responsible party has clearly demonstrated that it has the technical and financial resources to perform a full and complete cleanup of the site, thereby resulting in little or

no risk to the public for liability associated with cleanup of the site.” In this case, the prospective purchaser (City of Anaheim), and not the responsible party (Home Oil Company), will be performing the cleanup. In addition, it appears that Home Oil Company may not have sufficient financial resources to complete the cleanup on its own. Therefore, these proposed PPAs is being brought before the Board for approval.

Draft agreements have been prepared, and Board staff has determined that these agreements are appropriate in that they will facilitate real estate transactions that otherwise might not occur, ensure that cleanup will be accomplished in a timely manner, restore the Site to productive use by incorporating the Site into an existing adjacent public park, and will result in minimal risk to the public for liability associated with cleanup of the Site.

RECOMMENDATION:

Adopt Resolution R8-2005-0115, authorizing the Executive Officer to sign two Prospective Purchaser Agreements with the City of Anaheim.

California Regional Water Quality Control Board
Santa Ana Region

RESOLUTION NO. R8-2005-0115

Authorizing the Executive Officer to sign Two Prospective Purchaser Agreements with the City of Anaheim for Two Parcels in Anaheim, Orange County

WHEREAS, the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), finds:

1. Throughout the Santa Ana Region, there are parcels of property where past discharges of wastes have impacted or have threatened to impact groundwater.
2. Prospective purchasers are often interested in acquiring these properties for redevelopment, or for the purpose of continuing or enhancing existing activities at the property, for the economic benefit of the local community.
3. In these cases, the Board may be able to facilitate the property transaction by removing the potential liabilities from the transfer of such properties by entering into agreements with the prospective purchaser, while ensuring that adequate cleanup will be accomplished at the site.
4. The Board delegated authority to the Executive Officer to sign such agreements under certain conditions for sites that were not complex or controversial, in Resolution No. 99-81. It was the Board's intent that proposed PPAs not meeting the conditions specified in Resolution No. 99-81 be brought before the Board for approval in order to afford notice and the opportunity for public discussion.
5. The Home Oil Company owns a parcel of land located at 1422 West Broadway in Anaheim and leases an adjacent parcel located at 318 South Hessel from the Union Pacific Railroad Company (collectively, the Site). The Site has been utilized as a bulk petrochemical storage and transfer facility and an agricultural supply and service facility. The Site is impacted by petroleum and other chemicals as a result of these uses.
6. The City of Anaheim is proposing to purchase the Site and incorporate the Site into an adjacent park. The City of Anaheim is proposing to clean up the Site and restore the Site to productive use in exchange for agreements with the Board not to sue or to take other civil action against the City of Anaheim regarding the Site.
7. One of the conditions in Resolution No. 99-81 that would allow the Executive Officer to sign an agreement without Board approval is that the responsible party has the technical and financial resources to perform a full and complete cleanup of the site. In this case, the prospective purchaser (City of Anaheim), and not the responsible party (Home Oil Company), will be performing the cleanup.

Therefore, these proposed PPAs do not comply with the conditions of Resolution No. 99-81 must be brought before the Board for approval.

8. The City of Anaheim has the technical and financial resources to cause a full and complete cleanup of the Site.
9. Draft agreements have been prepared, and these agreements are appropriate in that they will facilitate real estate transactions that otherwise might not occur, ensure that cleanup will be accomplished in a timely manner, restore the Site to productive use by incorporating the Site into an existing adjacent public park, and will result in minimal risk to the public for liability associated with cleanup of the Site.

NOW THEREFORE BE IT RESOLVED THAT:

The Executive Officer is authorized to sign the two attached proposed prospective purchaser agreements with the City of Anaheim for the Site.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Santa Ana Region, on September 30, 2005.

Gerard J. Thibeault
Executive Officer

PROSPECTIVE PURCHASER AGREEMENT

This PROSPECTIVE PURCHASER AGREEMENT ("Agreement"), dated for purposes of identification only as of _____, 2005 (the "Date of Agreement"), is made by and between the CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SANTA ANA REGION (the "Regional Board"), an agency of the State of California, and the CITY OF ANAHEIM ("Anaheim"), a municipal corporation and California charter city, for properties located at 1422 West Broadway in Anaheim, California.

RECITALS

- A. Union Pacific Railroad Company, a Delaware corporation ("UPRR"), currently owns real property located in the City of Anaheim, County of Orange, State of California, more particularly described on Exhibit "A" attached hereto and more commonly known as 1422 West Broadway, APN 836-050-30 (the "Site").
- B. Home Oil of Anaheim, a California corporation ("Home Oil"), leased the UPRR Parcel from Southern Pacific Transportation Company, a Delaware corporation the predecessor in interest to UPRR, commencing in 1912 or earlier. Home Oil continues to lease the UPRR Parcel from UPRR.
- C. Anaheim desires to acquire the Site in order to expand an existing park located next to the Site.
- D. To the best of Anaheim's knowledge, Home Oil utilized the UPRR Parcel and the adjacent parcel known as the Home Oil Parcel as a bulk petrochemical storage and transfer facility and as an agricultural supply and service facility. These two properties contain or contained roughly several above ground storage tanks ranging from 5,000 to 25,000 gallons in size; three underground storage tanks ranging from 500 to 10,000 gallons in size; underground petroleum pipelines; petroleum and agricultural chemical and equipment storage areas; dispensing and loading areas; and storm drains. The Site is contaminated with petroleum and other chemicals as a result of these uses.
- E. Anaheim certifies that it engaged in no activities that led to the present contaminated condition of the Site.
- F. On July 30, 2002, the Regional Board pursuant to its authority in Cal. Water Code section 13267, directed Home Oil to conduct a subsurface investigation to delineate the lateral and vertical extent of soil contamination and to determine possible impacts to groundwater. The Regional Board also required quarterly status reports to be submitted on Home Oil's progress.
- G. On April 10, 2003, the Regional Board approved Home Oil's Workplan for Site Investigation and again required quarterly status reports.

- H. On October 9, 2003, the Regional Board required Home Oil to submit a soil and groundwater investigation report, a Corrective Action Plan ("CAP"), a timeline for surface structure demolition and a decommissioning plan.
- I. On May 21, 2004, the Regional Board approved implementation of Home Oil's CAP.
- J. On February 16, 2005, the Regional Board directed Home Oil to implement and complete the CAP and submit reports by specific dates. Home Oil has failed to meet the Regional Board's deadlines and the Site is thus out of compliance with Regional Board directives.
- K. If after taking title to the Site, Anaheim also purchases the neighboring Home Oil property, Anaheim intends to administer the clean up of the Site on behalf of Home Oil. It is expected that purchase proceeds (i.e., holdback of all or a portion of the purchase price) would be used to pay for cleaning up the Site. Anaheim's intent to facilitate the clean up will ensure an efficient cleanup that will allow the Site to be incorporated into the adjacent park as soon as possible. If, on the other hand, Anaheim cannot purchase the Home Oil Parcel for any reason, the existing responsible parties will remain responsible for cleaning up the Site.
- L. The Regional Board has and retains its enforcement rights under the California Water Code, and in particular Cal. Water Code section 13304, to order a responsible party, other than Anaheim if it acquires the Site, to clean up the existing environmental contamination on the Site.
- M. Anaheim's development and re-use of the Site to expand an existing public park is of public benefit to Anaheim and its residents.
- N. It is in the public's best interest to facilitate the sale, development and/or redevelopment of the Site concurrently with implementation of the CAP.
- O. The Regional Board has further determined that this Agreement will serve to protect the waters of the State by likely accelerating the stalled clean up process on this Site. The Regional Board has further determined that this Agreement is practical and in the public interest in that it is facilitating the transfer of the Site to Anaheim and allowing Anaheim to increase the size of an existing adjacent public park, thereby enhancing a valuable community asset.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Regional Board and Anaheim agree as follows:

1. PARTIES BOUND

This Agreement shall apply to and be binding upon and inure to the benefit of the

Regional Board and Anaheim and their respective officers, city council members, directors, members, partners, employees, lenders and agents and their Successors or Assigns (as defined in Section 8.3 below). The signatories represent that they are fully authorized to enter into the terms and conditions of this Agreement and to legally bind the Regional Board and Anaheim respectively. Upon executing the acknowledgment described in Section 8.3, the Successors or Assigns also represent that they are fully authorized to enter into the terms and conditions of this Agreement and are legally bound hereby.

2. COVENANT NOT TO SUE

2.1 Subject to the reservation of rights in Section 7 of this Agreement, the Regional Board covenants not to sue or take any other civil, judicial or administrative or other action, to pursue any claim, or enter any order (including, without limitation, a Cleanup and Abatement Order under California Water Code section 13304) against Anaheim arising from any and all pollutants or impacts existing at the Site (or which have migrated from the Site) as of the Effective Date of this Agreement. However, in the event no action has been taken by any party other than the Regional Board to clean up or compel clean up of the Site within five years from the Effective Date of the Agreement, the Regional Board, in its discretion, may terminate this Agreement. This covenant shall inure to the benefit of, and pass with each and every portion of the Site, and shall benefit any Successors or Assigns, subject to the provisions of Section 8.3 below. Anaheim agrees not to sue or take any other civil, judicial or administrative or other action, or to pursue any claim against the Executive Officer or the Regional Board arising from their respective participation in this Agreement.

2.2 In consideration of the Regional Board's covenant not to sue in Section 2.1 of this Agreement, Anaheim agrees not to hinder or impede the responsible parties in implementing the remediation as accepted by the Executive Officer of the Regional Board, subject to the terms of Sections 4 and 5 below.

3. CONDITION PRECEDENT

This Agreement shall not become effective unless and until Anaheim takes title to all or any portion of the Site. This Agreement will only apply to the parcel or portions of the Site to which Anaheim obtains an ownership interest. In no event will this Agreement obligate Anaheim to act affirmatively or refrain from action on any parcel or portion of a parcel to which Anaheim does not take title.

4. ACCESS

4.1 Subject to and after taking title to the Site, Anaheim hereby grants to the Regional Board and the Regional Board's representatives, contractors and agents an irrevocable right of access to the Site for the purposes of monitoring the remediation at the Site, on the terms and conditions set forth herein. The Regional Board and the Regional Board's representatives, contractors and agents, shall not exercise the right of access in such a way as to interfere unreasonably with the development, redevelopment, occupancy or operation of any development or redevelopment project on the Site, including, but not limited to, any buildings, recreational apparatus, ball fields or parking lots presently existing or to be constructed on the Site. This right

of entry will terminate when the Regional Board issues a No Further Action Letter.

4.2 Anaheim, after taking title to the Site, hereby agrees to grant to the responsible parties and their representatives, contractors and agents a right of access to the Site for the purposes of implementing the remediation and monitoring the remediation at the Site, on the terms and conditions set forth in a Right of Entry and License Agreement reasonably acceptable to the Anaheim City Attorney (the "Right of Entry Agreement"). The Right of Entry Agreement will provide that the responsible parties and their representatives, contractors and agents, will not exercise the right of access in such a way as to interfere unreasonably with the development, redevelopment, occupancy or operation of any development or redevelopment project on the Site, including, but not limited to, any buildings, recreational apparatus, ball fields or parking lots presently existing or to be constructed on the Site, or impose any liability or contingent liability upon Anaheim; to this end, the Right of Entry Agreement will require that the responsible parties provide evidence to Anaheim that the responsible parties, their agents and contractors are satisfactorily insured, that Anaheim is an additional insured and that the responsible parties indemnify and hold Anaheim harmless with respect to the activities undertaken pursuant to the Right of Entry Agreement. The Right of Entry Agreement will terminate when the Regional Board issues a No Further Action Letter or this Agreement is terminated.

5. NONINTERFERENCE

Anaheim agrees not to interfere with the responsible parties' compliance with any additional requirements imposed on it by the Regional Board or any other governmental agency or entity in connection with the remediation of the Site, provided that such compliance by the responsible parties does not unreasonably interfere with the development, redevelopment, occupancy or operation of the Site as a public park, including, but not limited to, any buildings, recreational apparatus, ball fields or parking lots presently existing or to be constructed on the Site, and provided that the provisions of Section 4.2 above are satisfied.

6. DUE CARE

Nothing in this Agreement shall be construed to relieve Anaheim of its duty to exercise due care with respect to any remaining soil or groundwater pollution at the Site, providing that the responsible parties clean up or cause to be cleaned up the Site to a level allowing for use as a public park, or Anaheim's duty to comply with all applicable laws and regulations.

7. RESERVATION OF RIGHTS

7.1 Nothing in this Agreement is intended to be, nor shall it be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, at law or in equity, which the Regional Board may have against Anaheim for:

7.1.1 Failure of Anaheim to comply with the terms and conditions of this Agreement;

7.1.2 Any liability resulting from the active discharge of any waste, hazardous substance, pollutant or contaminant by any person at the Site after Anaheim takes title to the Site; or

7.1.3 Any criminal liability of Anaheim.

7.2 Nothing in this Agreement is intended as a release from or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Regional Board or Anaheim may have against Home Oil, any prior owners, tenants or occupants of the Site, any of their parent corporations, any of their affiliates or any person, firm, corporation or other entity not a signatory, or a Successor or Assign, to this Agreement.

8. MISCELLANEOUS

8.1 The Regional Board agrees that the actions undertaken by Anaheim in accordance with this Agreement do not constitute an admission of any liability whatsoever by Anaheim. Anaheim expressly denies and disclaims liability to any person or entity or for any environmental contamination on the Site.

8.2 The parties to this Agreement hereby agree that this writing embodies the entire Agreement between the parties, and that no representations, promises or inducements of any kind have been made or relied upon by the parties to each other or any officer, employee, agent or attorney of the parties, other than those which appear in writing in this Agreement and that each covenant and condition mentioned in this Agreement is material consideration for the parties to enter into this Agreement. No claimed additions to or modifications or amendments of this Agreement, or any claimed waiver of any of its terms or conditions, shall be effective unless in writing and signed by the parties.

8.3 This Agreement shall not be construed in favor of or against any party hereto, but shall be construed as if all parties prepared this Agreement. The terms of this Agreement are contractual and not a recital of facts. Further, this Agreement shall inure to and bind the parties hereto, and the Successors or Assigns of each party hereto. The term "Successors or Assigns" means, without limitation, (i) any person, corporation, partnership or other entity succeeding to any of the assets, liabilities, business or property interests of Anaheim (or any other party entitled to the benefits of this Agreement) by virtue of merger, acquisition, asset purchase, stock purchase or otherwise, (ii) any person, corporation, partnership or other entity that acquires all or any portion of the Site from Anaheim or its successors, (iii) the lenders of Anaheim and any of the parties described in (i) and (ii) above, and (iv) the tenants of Anaheim who first take possession of the Site after the date of this Agreement and any of the parties described in (i) and (ii) above. In no event are Home Oil, or Union Pacific Railroad, any prior tenants or owners of the Site and/or any of their affiliates to be included within the term "Successors or Assigns." To benefit from the agreements of the Regional Board set forth herein, a Successor or Assign must sign an unqualified agreement acknowledging that it will be bound by the terms of Sections 2, 3, 4, 5 and 6 hereof. A copy of the signed agreement shall be provided to the Regional Board Executive Officer within 10 days of the successor's acquisition of the Site or any portion thereof.

8.4 The recitals set forth above and the exhibits attached hereto are incorporated herein by this reference as if set forth herein in full.

8.5 This Agreement is intended to confer rights and benefits only to the parties to this Agreement and their respective officers, city council members, directors, members, representatives, partners, employees, lenders and agents or the Successors or Assigns of the

parties to this Agreement that sign an acknowledgment that they will be bound under Section 8.3 hereof and their respective officers, city council members, directors, members, representatives, partners, employees and agents. No person or entity other than such parties shall have any legally enforceable rights under this Agreement.

8.6 This Agreement shall be controlled by and interpreted according to the laws of the State of California.

8.7 Whenever the text hereof requires, the use of the singular number shall include the appropriate plural number.

8.8 This Agreement may be executed in counterparts, and said counterparts shall constitute one and the same document.

8.9 This Agreement shall take effect on the date in which Anaheim takes title to the Site ("Effective Date").

8.10 This Agreement may be terminated by the Regional Board five years after the Effective Date as provided in section 2.1. The Regional Board will give Anaheim ninety (90) days advance written notice of its intent to terminate this Agreement.

8.11 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall no way be affected, impaired or invalidated; provided that the intent of the parties is upheld and preserved by such interpretation. If the parties' intent is not upheld and preserved by severing the invalid, void or unenforceable provision, this Agreement shall become null and void in its entirety.

IN WITNESS WHEREOF, the Regional Board and Anaheim have executed this Agreement as of the respective dates set forth below.

CITY OF ANAHEIM, a municipal Corporation and charter city

Dated: _____, 2005

ELISA STIPKOVICH,
Executive Director,
Community Development
Department

APPROVED AS TO FORM:
JACK L. WHITE, CITY ATTORNEY

JOHN E. WOODHEAD IV
Assistant City Attorney

**CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, SANTA
ANA REGION**

Dated: _____, 2005

Gerard Thibeault
Executive Officer

APPROVED AS TO FORM:

Jorge A. Leon, Senior Staff Counsel

777685v2

EXHIBIT A

UPRR Parcel Legal Description

PROSPECTIVE PURCHASER AGREEMENT

This PROSPECTIVE PURCHASER AGREEMENT ("Agreement"), dated for purposes of identification only as of _____, 2005 (the "Date of Agreement"), is made by and between the CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SANTA ANA REGION (the "Regional Board"), an agency of the State of California, and the CITY OF ANAHEIM ("Anaheim"), a municipal corporation and California charter city, for property located at 318 South Hessel, in Anaheim, California.

RECITALS

- A. Home Oil of Anaheim, a California corporation, ("Home Oil") currently owns real property located in the City of Anaheim, County of Orange, State of California, more particularly described on Exhibit "A" attached hereto and more commonly known as 318 South Hessel, APN 036-050-04 (the "Site").
- B. Anaheim desires to acquire the Site in order to expand an existing park located next to the Site. To the best of Anaheim's knowledge, Home Oil utilized the Home Oil Parcel, in conjunction with the neighboring parcel owned by Union Pacific Railroad Company, as a bulk petrochemical storage and transfer facility and as an agricultural supply and service facility. Home Oil's operations utilized 18 above ground storage tanks ranging from 5,000 to 25,000 gallons in size; three underground storage tanks ranging from 500 to 10,000 gallons in size; underground petroleum pipelines; petroleum and agricultural chemical and equipment storage areas; dispensing and loading areas; and storm drains. The Site is contaminated with petroleum and other chemicals as a result of these uses.
- C. Anaheim certifies that it engaged in no activities that led to the present contaminated condition of the Site.
- D. On July 30, 2002, the Regional Board pursuant to its authority in Cal. Water Code section 13267, directed Home Oil to conduct a subsurface investigation to delineate the lateral and vertical extent of soil contamination and to determine possible impacts to groundwater. The Regional Board also required quarterly status reports to be submitted on Home Oil's progress.
- E. On April 10, 2003, the Regional Board approved Home Oil's Workplan for Site Investigation and again required quarterly status reports.
- F. On October 9, 2003, the Regional Board required Home Oil to submit a soil and groundwater investigation report, a Corrective Action Plan ("CAP"), a timeline for surface structure demolition and a decommissioning plan.

- G. On May 21, 2004, the Regional Board approved implementation of Home Oil's CAP.
- H. On February 16, 2005, the Regional Board directed Home Oil to implement and complete the CAP and submit reports by specific dates. Home Oil has failed to meet the Regional Board's deadlines and the Site is thus out of compliance with Regional Board directives.
- I. The Regional Board has and retains enforcement rights under the California Water Code, and in particular California Water Code section 13304, to order a responsible party, other than Anaheim, if Anaheim acquires the Site, to clean up the environmental contamination on the Site.
- J. After taking title to the Site, Anaheim intends to administer the clean up of the Site on behalf of Home Oil. It is expected that purchase proceeds (i.e., holdback of all or a portion of the purchase price) will be used to pay for cleaning up the Site. Anaheim's intent to facilitate the clean up will ensure an efficient cleanup that will allow the Site to be incorporated into the adjacent park as soon as possible.
- K. Anaheim's development and re-use of the Site to expand an existing public park is of public benefit to Anaheim and its residents.
- L. It is in the public's best interest to facilitate the sale, development and/or redevelopment of the Site concurrently with implementation of the CAP.
- M. The Regional Board has further determined that this Agreement will serve to protect the waters of the State by accelerating the stalled clean up process on this Site. The Regional Board has further determined that this Agreement is practical and in the public interest in that it is facilitating the transfer of the Site to Anaheim and allowing Anaheim to increase the size of an existing adjacent public park, thereby enhancing a valuable community asset.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Regional Board and Anaheim agree as follows:

1. PARTIES BOUND

This Agreement shall apply to and be binding upon and inure to the benefit of the Regional Board and Anaheim and their respective officers, city council members, directors, members, partners, employees, lenders and agents and their Successors or Assigns (as defined in Section 8.3 below). The signatories represent that they are fully authorized to enter into the terms and conditions of this Agreement and to legally bind the Regional Board and Anaheim respectively. Upon executing the acknowledgment described in Section 8.3, the Successors or Assigns also represent that they are fully authorized to enter into the terms and conditions of this Agreement and are legally bound hereby.

2. COVENANT NOT TO SUE

2.1 Subject to the reservation of rights in Section 7 of this Agreement, the Regional Board covenants not to sue or take any other civil, judicial or administrative or other action, to pursue any claim, or enter any order (including, without limitation, a Cleanup and Abatement Order under California Water Code section 13304) against Anaheim arising from any and all pollutants or impacts existing at the Site (or which have migrated from the Site) as of the Effective Date of this Agreement. However, in the event no action has been taken by any party other than the Regional Board to clean up or compel clean up of the Site within five years from the Effective Date of the Agreement, the Regional Board, in its discretion, may terminate this Agreement. This covenant shall inure to the benefit of, and pass with each and every portion of the Site, and shall benefit any Successors or Assigns, subject to the provisions of Section 8.3 below. Anaheim agrees not to sue or take any other civil, judicial or administrative or other action, or to pursue any claim against the Executive Officer or the Regional Board arising from their respective participation in this Agreement.

2.2 In consideration of the Regional Board's covenant not to sue in Section 2.1 of this Agreement, Anaheim agrees not to hinder or impede Home Oil in implementing the remediation as accepted by the Executive Officer of the Regional Board, subject to the terms of Sections 4 and 5 below.

3. CONDITION PRECEDENT

This Agreement shall not become effective unless and until Anaheim takes title to all or any portion of the Site. This Agreement will only apply to the parcel or portions of the Site to which Anaheim obtains an ownership interest. In no event will this Agreement obligate Anaheim to act affirmatively or refrain from action on any parcel or portion of a parcel to which Anaheim does not take title.

4. ACCESS

4.1 Subject to and after taking title to the Site, Anaheim hereby grants to the Regional Board and the Regional Board's representatives, contractors and agents an irrevocable right of access to the Site for the purposes of monitoring the remediation at the Site, on the terms and conditions set forth herein. The Regional Board and the Regional Board's representatives, contractors and agents, shall not exercise the right of access in such a way as to interfere unreasonably with the development, redevelopment, occupancy or operation of any development or redevelopment project on the Site, including, but not limited to, any buildings, recreational apparatus, ball fields or parking lots presently existing or to be constructed on the Site. This right of entry will terminate when the Regional Board issues a No Further Action Letter.

4.2 In addition, in the event Home Oil conducts the environmental investigation and remediation, Anaheim, after taking title to the Site, hereby agrees to grant to Home Oil and Home Oil's representatives, contractors and agents a right of access to the Site for the purposes of implementing the remediation and monitoring the remediation at the Site, on the terms and conditions set forth in a Right of Entry and License Agreement reasonably acceptable to the Anaheim City Attorney (the "Right of Entry Agreement"). The Right of Entry Agreement

will provide that Home Oil and Home Oil's representatives, contractors and agents, will not exercise the right of access in such a way as to interfere unreasonably with the development, redevelopment, occupancy or operation of any development or redevelopment project on the Site, including, but not limited to, any buildings, recreational apparatus, ball fields or parking lots presently existing or to be constructed on the Site, or impose any liability or contingent liability upon Anaheim; to this end, the Right of Entry Agreement will require that Home Oil provide evidence to Anaheim that Home Oil, its agents and contractors are satisfactorily insured, that Anaheim is an additional insured and that Home Oil indemnifies and holds Anaheim harmless with respect to the activities undertaken pursuant to the Right of Entry Agreement. The Right of Entry Agreement will terminate when the Regional Board issues a No Further Action Letter.

5. NONINTERFERENCE

Anaheim agrees not to interfere with Home Oil's compliance with any additional requirements imposed on it by the Regional Board or any other governmental agency or entity in connection with the remediation of the Site, provided that such compliance by Home Oil does not unreasonably interfere with the development, redevelopment, occupancy or operation of the Site as a public park, including, but not limited to, any buildings, recreational apparatus, ball fields or parking lots presently existing or to be constructed on the Site, and provided that the provisions of Section 4.2 above are satisfied.

6. DUE CARE

Nothing in this Agreement shall be construed to relieve Anaheim of its duty to exercise due care with respect to any remaining soil or groundwater pollution at the Site, providing that Home Oil cleans up or causes to be cleaned up the Site to a level allowing for use as a public park, or Anaheim's duty to comply with all applicable laws and regulations.

7. RESERVATION OF RIGHTS

7.1 Nothing in this Agreement is intended to be, nor shall it be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, at law or in equity, which the Regional Board may have against Anaheim for:

7.1.1 Failure of Anaheim to comply with the terms and conditions of this Agreement;

7.1.2 Any liability resulting from the active discharge of any waste, hazardous substance, pollutant or contaminant by any person at the Site after Anaheim takes title to the Site; or

7.1.3 Any criminal liability of Anaheim.

7.2 Nothing in this Agreement is intended as a release from or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Regional Board or Anaheim may have against Home Oil, any prior owners, tenants or occupants of the Site, any of their parent corporations, any of their affiliates or any person, firm, corporation or other entity not a signatory, or a Successor or Assign, to this Agreement.

will provide that Home Oil and Home Oil's representatives, contractors and agents, will not exercise the right of access in such a way as to interfere unreasonably with the development, redevelopment, occupancy or operation of any development or redevelopment project on the Site, including, but not limited to, any buildings, recreational apparatus, ball fields or parking lots presently existing or to be constructed on the Site, or impose any liability or contingent liability upon Anaheim; to this end, the Right of Entry Agreement will require that Home Oil provide evidence to Anaheim that Home Oil, its agents and contractors are satisfactorily insured, that Anaheim is an additional insured and that Home Oil indemnifies and holds Anaheim harmless with respect to the activities undertaken pursuant to the Right of Entry Agreement. The Right of Entry Agreement will terminate when the Regional Board issues a No Further Action Letter.

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7.1.1 Failure of Anaheim to comply with the terms and conditions of this Agreement;

7.1.2 Any liability resulting from the active discharge of any waste, hazardous substance, pollutant or contaminant by any person at the Site after Anaheim takes title to the Site; or

7.1.3 Any criminal liability of Anaheim.

7.2 Nothing in this Agreement is intended as a release from or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Regional Board or Anaheim may have against Home Oil, any prior owners, tenants or occupants of the Site, any of their parent corporations, any of their affiliates or any person, firm, corporation or other entity not a signatory, or a Successor or Assign, to this Agreement.

8. MISCELLANEOUS

8.1 The Regional Board agrees that the actions undertaken by Anaheim in accordance with this Agreement do not constitute an admission of any liability whatsoever by Anaheim. Anaheim expressly denies and disclaims liability to any person or entity or for any environmental contamination on the Site.

8.2 The parties to this Agreement hereby agree that this writing embodies the entire Agreement between the parties, and that no representations, promises or inducements of any kind have been made or relied upon by the parties to each other or any officer, employee, agent or attorney of the parties, other than those which appear in writing in this Agreement and that each covenant and condition mentioned in this Agreement is material consideration for the parties to enter into this Agreement. No claimed additions to or modifications or amendments of this Agreement, or any claimed waiver of any of its terms or conditions, shall be effective unless in writing and signed by the parties.

8.3 This Agreement shall not be construed in favor of or against any party hereto, but shall be construed as if all parties prepared this Agreement. The terms of this Agreement are contractual and not a recital of facts. Further, this Agreement shall inure to and bind the parties hereto, and the Successors or Assigns of each party hereto. The term "Successors or Assigns" means, without limitation, (i) any person, corporation, partnership or other entity succeeding to any of the assets, liabilities, business or property interests of Anaheim (or any other party entitled to the benefits of this Agreement) by virtue of merger, acquisition, asset purchase, stock purchase or otherwise, (ii) any person, corporation, partnership or other entity that acquires all or any portion of the Site from Anaheim or its successors, (iii) the lenders of Anaheim and any of the parties described in (i) and (ii) above, and (iv) the tenants of Anaheim who first take possession of the Site after the date of this Agreement and any of the parties described in (i) and (ii) above. In no event is Home Oil or any prior tenants or owners of the Site and/or any of their affiliates to be included within the term "Successors or Assigns." To benefit from the agreements of the Regional Board set forth herein, a Successor or Assign must sign an unqualified agreement acknowledging that it will be bound by the terms of Sections 2, 3, 4, 5 and 6 hereof. A copy of the signed agreement shall be provided to the Regional Board Executive Officer within 10 days of the successor's acquisition of the Site or any portion thereof.

8.4 The recitals set forth above and the exhibits attached hereto are incorporated herein by this reference as if set forth herein in full.

8.5 This Agreement is intended to confer rights and benefits only to the parties to this Agreement and their respective officers, city council members, directors, members, representatives, partners, employees, lenders and agents or the Successors or Assigns of the parties to this Agreement that sign an acknowledgment that they will be bound under Section 8.3 hereof and their respective officers, city council members, directors, members, representatives, partners, employees and agents. No person or entity other than such parties shall have any legally enforceable rights under this Agreement. This Agreement shall be controlled by and interpreted according to the laws of the State of California.

8.6 Whenever the text hereof requires, the use of the singular number shall include the appropriate plural number.

8.7 This Agreement may be executed in counterparts, and said counterparts

shall constitute one and the same document.

8.8 This Agreement shall take effect on the date in which Anaheim takes title to the Site ("Effective Date").

8.9 This Agreement may be terminated by the Regional Board five years after the Effective Date as provided in section 2.1. The Regional Board will give Anaheim ninety (90) days advance written notice of its intent to terminate this Agreement.

8.10 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall no way be affected, impaired or invalidated; provided that the intent of the parties is upheld and preserved by such interpretation. If the parties' intent is not upheld and preserved by severing the invalid, void or unenforceable provision, this Agreement shall become null and void in its entirety.

IN WITNESS WHEREOF, the Regional Board and Anaheim have executed this Agreement as of the respective dates set forth below.

CITY OF ANAHEIM, a municipal
Corporation and charter city

Dated: _____, 2005

ELISA STIPKOVICH,
Executive Director,
Community Development
Department

APPROVED AS TO FORM:
JACK L. WHITE, CITY ATTORNEY

JOHN E. WOODHEAD IV
Assistant City Attorney

**CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, SANTA
ANA REGION**

Dated: _____, 2005

Gerard J. Thibeault
Executive Officer

APPROVED AS TO FORM:

Jorge A. Leon, Senior Staff Counsel
777923v2

EXHIBIT A

Home Oil Parcel Legal Description